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EXTRAORDINARY

PART II—Section 3

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**ELECTION COMMISSION, INDIA**

**NOTIFICATION**

*New Delhi, the 7th March 1955*

**S.R.O. 666.**—Whereas the election of Sarvashri Mihan Singh and Gian Singh as members of the Legislative Assembly of the State of PEPSU, from the Amloh constituency has been called in question by an election petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Shri Mohinder Singh, son of Shri Sapuran Singh, resident of village Haimayunpur, P.O. Sirhind Mandi, Thana Sirhind, Tehsil Bassi, District Fatehgarh Sahib;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL, PATIALA**

Nawal Kishore, *Chairman.*

Dalip Singh, *Member.*

Krishna Sahai, *Member.*

**ELECTION PETITION No. 16 OF 1954**

Mohinder Singh s/o Sapuran Singh resident of village Haimayunpur, P.O. Sirhind Mandi and Thana Sirhind, Tehsil Bassi, Distt. Fatehgarh Sahib—*Petitioner.*

*Versus*

S. Mihan Singh s/o Sadda Singh, village Rajagarh, Post Office Doraha Mandi, Tehsil Payal, District Fategarh Sahib

2. S. Gian Singh s/o S. Rattan Singh Yadvindra Bhavan, Patiala.
3. Kanwar Sain s/o Lachhmi Chand Pleader, Amloh Sub-Tehsil, Amloh.
4. Tehal Singh s/o Dhanna Singh of village Begowal, Advocate Bahera Road, Patiala.
5. Kartar Singh s/o Ganda Singh of village Lasol, Pleader Bassi.
6. Ujagar Singh B.A., LL.B., Pleader Amloh, Sub-Tehsil Amloh.
7. Hazara Singh s/o Ram Singh, village Allah-dad-pur, P.O. Amloh.
8. Harnek Singh s/o Rura Singh Ramdasia, village Lasara, P.O. Lasoi, Tehsil Payal.
9. Lieut. Bhag Singh, village Payal, Post Office Payal,

10. Pritam Singh Manager, Sahaura Bus Service, village Sahaura, P.O. Sahaura, Tehsil Sirhind—*Respondents*.

ORDER DELIVERED ON 25TH FEBRUARY, 1955

*S. Mohinder Singh Vs. S. Mihan Singh and others*

Election Petition No. 16 of 1954 has been filed by S. Mohinder Singh challenging the election of S. Mihan Singh and S. Gian Singh from Amloh, a double member constituency in the State of PEPSU. All the duly nominated candidates have been impleaded as respondents, but only respondents No. 1 and 2, the seated members, filed written statements and have contested the petition.

Elections in this constituency took place on 26th of February, 1954. The petitioner secured 14,700 votes, respondent No. 1, 19,838 and respondent 2, 21,803 votes. Accordingly the petitioner and Tehal Singh respondent No. 4, the Congress candidates were defeated and respondent 1 and 2 were declared elected. Hence this petition on behalf of S. Mohinder Singh.

The petitioner seeks to set aside the election of respondent No. 1 on the following grounds:—

- (1) That the symbol of camel with a thick circle round it was not one of the approved symbols; and
- (2) That the respondent No. 1 was not a scheduled caste candidate of an approved or recognised party and, therefore, allotment of a symbol of camel with a thick black circle round it was illegal, improper and unjust.

The petitioner therefore pleaded that the allotment to respondent No. 1 of the symbol of camel with a thick circle round it was illegal, improper and unjustified and that as a result of this allotment voters were misled and respondent No. 1 secured more votes by this improper allotment of symbol and thus the result of the election was materially affected. The petitioner further pleads that if the election of respondent No. 1 is set aside, the election of respondent No. 2 also must necessarily be set aside. This, he urges, is a point of law which the Tribunal has to decide.

It is urged that an objection to the allotment of a common symbol to both the respondents was raised before the Returning Officer, but it was over-ruled by him. The election accordingly was not free and this had materially affected the result of the election.

Written statements filed by both the respondents contained identical pleas. Respondent No. 1 urges that respondents No. 1 and 2 contested the election as members of the PEPSU National Front. Respondent No. 1 S. Mihan Singh contested the reserved seat; while respondent No. 2 S. Gian Singh contested the General seat. They asked for a common symbol and they were both given symbol of camel with this difference that the symbol of camel with a thick black circle round it was assigned to respondent No. 1. This they urge was not only proper but in accordance with the directions of the Election Commission. They further urge that the Returning Officer was the final authority regarding the allotment of symbols and this fact could not be challenged in an election petition. Further it is alleged that voters were in no way deceived by allotment of this symbol and in any case the result of the election was not materially affected. The pleadings of the parties gave rise to the following issues:—

- (1) Was the allotment of the symbol of camel with thick circle around it to respondent No. 1 illegal, improper and unjust as it is not one of the approved symbols and is allotted only to scheduled caste candidates of approved parties? O.P.
- (2) If so, was the election not free and has the result of the election been materially affected? O.P.
- (3) Is the election of respondent No. 2 also liable to be legally set aside, if the election of respondent No. 1 is declared void? O.P.
- (4) Is the decision of the Returning Officer in assigning the symbol in question to respondent No. 1 final and is not liable to be called in question in this election petition? O.R.
- (5) To what relief is the petitioner entitled?

*Issues No. 1 and 4.*—Issue No. 1 is a mixed issue of law and fact and parties have led both oral as well as documentary evidence. It is one of the most important issues in the case and the learned counsel for the parties have addressed lengthy arguments on it.

It is not disputed that according to the directions of the Election Commission, a symbol was reserved for All India Parties recognised by the Commission and in a double member constituency, a common symbol was allotted to both the candidates sponsored by such parties, with this difference only that the symbol assigned to the scheduled caste or scheduled tribe candidate was enclosed in a thick black circle. Now the Indian National Congress was recognised as an All India Party. It set up the petitioner for the reserved seat and S. Tehal Singh respondent No. 4 for the General Seat. The symbol "Two bulls with a yoke on" was reserved for this party and the petitioner was allotted the symbol of "Two bulls with a yoke on" encircled in a thick black circle and S. Tehal Singh was allotted the party symbol without a circle round it. It is also admitted that the PEPSU National Front had sought recognition of the Election Commission, but had failed in its attempt to be recognised as an All India Party. No symbol was accordingly reserved for it. Respondents No. 1 and 2 allege that they were members sponsored by the party and although no symbol was reserved for them, they both asked for the common symbol of "Camel" as their first choice, their second and third choice being "Elephant" and "Cycle". The Returning Officer acting as though they were sponsored by an All India Party allotted to them a common symbol with this difference that respondent No. 1 was assigned the symbol of "Camel" with a thick black circle round it. The respondents allege that this was in accordance with the directions of the Election Commission and that this allotment was proper.

The consideration of this issue involves the determination of the following two points:—

- (a) Whether the symbol of "Camel" with a thick black circle round it is one of the approved symbols.
- (b) Whether this symbol could be allotted to a scheduled caste candidate of an unapproved or unrecognised party.

The burden of proving these two points lay on the petitioner who produced 8 witnesses and 9 documents. Respondent No. 1 who is a contesting respondent produced 3 witnesses and 4 documents. It is not necessary to sum up this evidence at this stage. It will be referred to as and when necessary. Regarding these points, the learned counsel for the petitioner urged that under Rule 5(1) of the Rules framed under Act 43 of 1951, the Election Commission was given the power to publish a list of symbols and that in pursuance of the powers, the latter published a list of symbols vide a Notification No. 56/2/53-1, dated the 6th of February, 1953. This list is Ex. P5 on the record. In this list 'Camel' is included as a symbol at No. 24, but it is urged that 'Camel' with a thick black circle does not occur in this list and that this latter symbol is not one of the approved symbols. Further it is contended that such a symbol could not be allotted to a scheduled caste candidate of an unapproved party. In support of his contention, the learned counsel referred to Rule 5(2) and Rule 10 framed under the Act and urged that though the nomination papers should be accompanied by a declaration specifying 3 symbols in order of preference out of the list of the symbols, the choice by the candidate and their assignment by the Returning Officer was subject to restrictions and any general and special directions issued by the Election Commission as contained in Ex. P9, as modified in Ex. P3. Now according to Ex. P9 which is dated 10th September, 1951 and this is the principal document of importance, a list of 25 symbols contained in appendix A was originally issued and out of these 14 symbols as set out in Appendix B were reserved for candidates of different political parties called, All India Parties. It was expressly stated that Commission did not wish to reserve any more symbols for any other parties. As regards the State Parties, it was pointed out that they could make their choice of symbols out of the approved symbols in Appendix 'A' and not out of Appendix 'B'. The allotment of symbols was entrusted to the Returning Officer, who after assigning to the 'official candidate' of a party the symbol reserved for that particular party had to act under Rule 10(1) of the Rules under Act 43 of 1951 and assign symbols to other candidates. It was pointed out in these directions that in a two member constituency each party may set up two candidates one for the General seat and the other for the Reserved seat as is clear from what follows. The reserved symbol was to be assigned to both the official candidates of the party—with only this distinction that in the case of the scheduled caste candidates, the particular symbol will be enclosed with a thick

black circle. Then there occurs a paragraph which has been interpreted by either party differently and on its correct interpretation hinges the fate of issue No. 1. Relevant portion of this paragraph may be set out *in extenso*:—

“The question arises whether Scheduled Caste or Scheduled Tribe candidate not sponsored by any party will have symbols enclosed in thick black circles like the party Scheduled Caste or Scheduled Tribe candidates. The Commission does not agree to this. In the first place, it will increase the task of printing of the symbols, as in that case every symbol in the list in Appendix ‘A’ will have to be printed in two versions—in one case the bare symbol and in the other the same symbol enclosed in black circle. In the second place, the circle is not to be made a badge of distinction between the scheduled caste or the Scheduled Tribe population and the rest of the people. It is to be remembered that a Scheduled Caste candidate is entitled to be considered for the general i.e. the unreserved seat in addition to his being eligible for the reserved seat. No such distinction except for distinguishing him from the other party candidate or candidates is, therefore, necessary.”

Against this back-ground it has been argued on behalf of the petitioner that when the Returning Officer found that both the respondents had asked for a common symbol, it was not open to him to enclose the symbol of the first respondent within a thick black circle and that he should have instead either assigned to him a symbol of his second choice or decided the matter by casting lots as provided in Rule 10(1) of the Rules framed under Act 43 of 1951. During the course of this contention the learned counsel referred to and laid emphasis on “any party” occurring in the extract of Ex. P9 and urged that they should be interpreted to mean “any recognised party”. The contention in plain language is that if a scheduled caste candidate is not sponsored by any recognised or approved party, a symbol enclosed in a thick black circle should not be assigned to him, as according to Ex. P9 a circle should not be and is not to be made a badge of distinction between the Scheduled Caste or Scheduled Tribe population and the rest of the people. On the contrary, the learned counsel for the respondent vehemently contends that the narrow interpretation of “any party” was wholly unjustified, as the word “recognised” should not be imported into the plain language of the paragraph. It is, therefore, argued that there is no bar to the Returning Officer assigning a symbol with a thick black circle round it to a person not sponsored by any party. Reliance is also placed on Ex. R2. Ex. R2 is a resume of discussion at a conference in Kapurthala between the Chief Electoral Commissioner and the Representatives of the Indian National Congress, on the two rival groups both calling themselves ‘Shiromani Riasti Akali Dal’ and the newly formed PEPSU National Front Party. With regard to the recognition of the PEPSU National Front and allotment and reservation of a symbol for it, the Chief Election Commissioner decided that as the party had no appreciable primary membership, it was not entitled to recognition. The Chief Election Commissioner then goes on to say “there is of course, nothing to prevent it from setting up candidates who can individually ask for the allotment of a common symbol, but I do not see any justification at present in reserving that symbol for these candidates”. This, the respondent No. 1, contends is a direction by the Election Commission that a common symbol could be allotted to candidates set up by the PEPSU National Front. We are unable to agree with this contention. In our opinion, Ex. R2 does not contain instructions as contemplated by the Rules framed under the Act and does not change or modify any directions or instructions already issued by the Election Commission from time to time regarding the issue of symbols. This view is based on the fact that whenever it was intended to modify the instructions already issued, it was expressly stated as is clear from a perusal of Ex. P3.

After carefully perusing and analysing Exs. P9, P3 and R2, our firm view is that the instructions issued by the Election Commission expressly deal with only two sets of candidates, namely those set up by approved parties and independent candidates. If the Election Commission had decided not to recognise a party, it does not stand to reason that it would frame rules for it or even refer to it in the Rules. Candidates not sponsored by any recognised party will take their place and be treated as independent candidates. This interpretation of the directions considered as a whole is neither strained nor can it be said that the word “recognised” is being imported into the language. If the contention of the learned counsel for the respondent prevailed, unrecognised parties will be placed on par with recognised parties in the matter of assignment of symbols, but this is neither

implied nor intended by the instructions or directions. The extract from Ex. P9 referred to above relates only to independent scheduled caste candidates and since it is open to them to stand for the reserved as well as the unreserved seat, it is not at all necessary to enclose the symbol allotted to them with a thick black circle. They might well ask for a common symbol being assigned to them, but the Returning Officer will either assign different symbols or decide the matter by casting lots as provided by Rule 10(1) referred to above. The Returning Officer admitted as P.W. 3 that he had committed a mistake in assigning a common symbol to the two candidates set up by the PEPSU National Front. He treated them as if they had been set up by a recognised All-India Party and assigned a common symbol to them. He realised afterwards that he had committed a mistake, but did not mention why he thought so. When he appeared again as R.W. 1, he produced Ex. R.W. 1/4, a letter from the Chief Electoral Officer and stated that it was after its perusal that he had realised the mistake. R.W. 1/4 is in our opinion a correct interpretation of the instructions or directions contained in Ex. P9. Before parting with this subject we may advert to the contention of the learned counsel for the respondents that even if "any party" may be taken to mean only recognised party, so far as unrecognised parties were concerned, there was nothing in the rules which prohibited the allotment of a symbol with a thick black circle to a Scheduled Caste candidate set up by it. Reliance is placed on the statements of P.W. 4 S. Kehar Singh, Election Officer, PEPSU and R.W. 1 Shanti Swarup. They have stated in their evidence that instructions in Ex. P9 did not expressly prohibit the assignment of a symbol with a thick black circle to a Scheduled Caste candidate of an unapproved party. We have, however, held that the instructions do not at all purport to cover the case of parties not approved by the Election Commission. The question of prohibition, under the circumstances does not arise.

It was also urged that in any case the decision of the Returning Officer in assigning a symbol to a candidate under Rule 10(1) is final and even the Election Tribunal cannot go into the question. In support of this contention the learned counsel for the respondents has invited our attention to 5 E.L.R. 81. In that case the Returning Officer at the time of scrutiny of nomination papers rejected the nomination paper of the petitioner on the ground that the name of the petitioner could not come on the Electoral Roll of Talania and the Entry therefore was wrong. Question then arose whether the Returning Officer had improperly rejected the nomination paper of the petitioner. Briefly the Tribunal held that by Section 36(7) of the Act of 1951 the Entry was made conclusive for the purpose of scrutiny of nominations by the Returning Officer, and it must be accepted as conclusive by the Tribunal also when the Tribunal was considering the action of the Returning Officer taken under that Section.

It is contended that, arguing on the above analogy, the decision of the Returning Officer, in the present case, should be regarded as final and the Tribunal is debarred from questioning the decision of the Returning Officer. We consider that this argument is not correct. In the first place the facts of the case in 5 E.L.R. 81 are entirely different from those in the present case and do not help the decision of the point in issue in this case. Secondly the decision of the Returning Officer in this case can be considered final only if he has acted in accordance with the Rules and directions of the Election Commission. Where, however, the order has been passed in disregard of the instructions, it is open to the Tribunal to go into the question of its propriety.

The contention of the learned counsel for the petitioner that "Camel" with a thick black circle was not included in the list of approved symbols does not now call for a separate treatment. It is sufficient to say that the symbol selected by both the respondents was "Camel" which is an approved symbol and a use of the circle as a mark of distinction between them was improper. Respondents 1 and 2, therefore, not being members of a recognised All India Party could only be treated as independent candidates and a common symbol could not have been allotted to them. We, therefore, hold that a symbol with a thick black circle round it could not under the directions of the Election Commission be, allotted to respondent No. 1. Accordingly, we find issues Nos. 1 and 4 in favour of the petitioner and against the respondents.

*Issues Nos. 2 and 3.*—The next question for consideration is whether the result of the election has been materially affected on account of the improper allotment of symbol to respondent No. 1 and whether the election of respondent No. 2 was also liable to be set aside, if the election of the first respondent was declared void.

In view of what has been held above, issue No. 2 assumes considerable importance. The burden of proving that the result of the election has been materially affected lies heavily on the petitioner and it is well established that if the petitioner fails to produce satisfactory evidence, the Tribunal would not interfere with the result and would allow the election to stand.

The relevant provision on the above point is contained in Section 100(2)C which runs as below:—

"If the Tribunal is of opinion that the result of the Election has been materially affected by the improper reception or refusal of a vote or by non-compliance with the provisions of the Constitution or of this Act or of *any rules* or orders made under this Act or of any other Act or rules relating to election or by any mistake in the use of any prescribed form, "The Tribunal shall declare the election of the returned candidate to be void.

This section implies that two conditions must be satisfied before an election is set aside:—

- (1) That there had been *inter alia* non-compliance with any of the rules made under Act 43 of 1951.
- (2) That accordingly or in consequence of such non-compliance the result of the election had been materially affected.

The contention of the learned counsel for the petitioner on this point may be summed up as below:—

- (a) That the Returning Officer had not acted in the manner laid down in Rule 10 and therefore, had not complied with its provisions and that for that reason alone the result of the election had been materially affected. He cited in support of his contention a judgment of the Supreme Court printed in the Gazette of India Extraordinary, dated 17th January, 1955 in C.A. 61 of 1954 in the case of *Hari Vishnu Kamath Versus Syed Ahmed Syed Isak and others*.
- (b) That on account of the assignment of camel with a thick circle, the illiterate voters had become confused and in their anxiety to make sure that they voted for respondent No. 2, they cast one vote in the ballot box bearing the symbol of camel and the other vote also in the box with symbol of camel with a thick circle.

Both these contentions will be dealt with separately. There is considerable difference between the present case and the Supreme Court case referred to above. It may be pointed out at the outset that the Judgment of the Supreme Court turns upon a consideration of Rules 28 and 47(1)C framed under Act 43 of 1951. Rule 28 runs as follows:—

"The ballot papers to be used for the purpose of voting at an election to which this chapter applies shall contain a serial number and such distinguishing marks as the Election Commission may decide."

Rule 47(1)C is as follows:—

"A ballot paper contained in a ballot box shall be rejected if it bears any serial number or mark different from the serial number and marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used."

It appears from the facts recited in the Judgment of the Supreme Court that out of the votes counted in favour of the first respondent 301 ballot papers did not have the distinguishing marks prescribed under Rule 28 and yet instead of being rejected, they were taken into account and the first respondent was declared elected. The Election Tribunal held that Rule 47(1)C was mandatory and 301 ballot papers found in the box of the first respondent should not have been counted. The election was, however, not set aside by the Tribunal as it held that the result of the election was not materially affected by the erroneous reception of the votes. The Writ Application was dismissed by the High Court but on appeal the Supreme Court agreed with the Tribunal as regards the first portion of the finding that 301 ballot papers should not have been counted, but accepted the appeal and set aside the election on the ground that the election had been materially affected.

It may be pointed out that this Judgment turns upon the interpretation and proper application of Rules 23, 28 and 47(1)C of the Rules framed under Act 43 of 1951 arising out of wrong delivery of ballot papers. A few details will make

the position clear. It appears that the election in this case was held both for the House of the People and the States Assembly and interchange of ballot papers occurred in several polling stations with the result that voters for the House of People were given ballot papers intended for the State Assembly and *vice versa*. The Returning Officer reported to the Chief Electoral Officer that wrong ballot papers had been issued owing to the mistake of the Polling Officer and obtained the approval of the Election Commission for the defect being condoned and for treating these ballot papers as correct for the purpose of counting votes. It was held that in accepting the ballot papers in question, the Returning Officer had contravened Rule 47(1)C. It was further held that Rule 23 had also been violated, as wrong ballot papers had been issued. The question then arose whether on account of this contravention of the law the result of the election had been materially affected. In other words the point stressed before the court also raised the question whether the election of the first respondent could be up-held under Section 100(2)C of Act 43 of 1951 on the ground that if Rule 23 had not been violated, the wasted votes would have gone to him. It was found that the expression "the result of the election" in Section 100(2)C of the Act must be construed in the same sense as in Section 66 of the Act and there it clearly meant the result on the basis of valid votes. Since no candidate could be declared elected on the result of votes which should have been rejected, it was held that the result of the election had been materially affected as a consequence of the breach of the rule.

It will be clear from the above resume of the case that question in that case was a totally different one and the considerations which prevailed in its decision do not arise here. Here all that is urged is that there was a breach of Rule 10(1) but it is not shown that it had a penal consequence like the one provided in Rule 47(1)C. The Judgment is, however, helpful in as much as it makes it imperative that the result of the election will be held to be materially affected only if it was a consequence of the breach of the rule. The petitioner in the circumstances had to prove what he alleged namely firstly that owing to the mistake in the assignment of the symbol the voters were confused and too many votes were cast for the first respondent, and secondly that if this had not happened the petitioner would have secured a sufficient number of votes out of 5,000 and odd votes which the first respondent received in excess and thereby defeated him. The petitioner has produced P.W. 1 Charan Singh, P.W. 5 Kaur Singh, P.W. 6 Bakhtawar Singh and P.W. 7 Chanan Singh in order to prove that when they went to cast their votes, they found two boxes inside the booth bearing the symbol of camel and got confused. Accordingly they could not make sure which of these boxes belonged to the second respondent, but since they had decided that they must vote for him, they cast their ballot papers in both these boxes. By putting questions to these witnesses and asking them for whom they had voted, the petitioner's learned counsel had himself violated the secrecy of the ballot. Accordingly respondents' counsel filed an application for permission to have the sealed packets of ballot papers and marked copy of the electoral rolls opened, as he suspected that these witnesses had not voted for respondent No. 1, as deposed by them. Necessary permission was granted and the statement of R.W. 1 Shanti Sarup, Returning Officer establishes beyond all manner of doubt that these witnesses have deliberately perjured themselves. It turns out that P.Ws. 5 and 6 are not entered as voters in any of the lists while P.Ws. 4 and 7 had actually voted for the petitioner and not for respondent No. 1. It is needless to comment upon the grossly false statements of these witnesses any further. P.W. 8 the petitioner, in supporting them has also told a lie which has been nalled to the counter beyond all manner of doubt. There is accordingly absolutely no basis for holding that the existence of the circle round the symbol in any way created any confusion. Symbols with thick black circle are always assigned to Scheduled Caste candidates of approved parties in double member constituencies, as was done in the case of the petitioner himself, but he admitted as a witness that none of his voters had complained that because of it they had got confused and cast their votes for the candidate for the General Seat.

In the circumstances there is absolutely no basis for holding that the result of the election had been materially affected as a consequence of the breach or violation of Rule 10(1) of the Rules. In this view of the case issue No. 3 becomes redundant and need not be gone into.

The petitioner is not entitled to any relief. In the result we would dismiss the petition with costs to Respondents 1 and 2.

(Sd.) NAWAL KISHORE, *Chairman*.

(Sd.) KRISHNA SAHAI, *Member*.

*S. Mohinder Singh Vs. S. Mihan Singh and others*

## ORDER

I have read the judgment of my learned colleagues and agree with their finding on issue No. 2. As regards issues 1, 4, I have carefully considered these points and given my best consideration, but I regret to say that I find myself unable to agree with their conclusions on issues No. 1, 4. The finding on issue No. 3 being considered unnecessary by them has not been given and I propose to give my finding on issues No. 1, 3, 4 separately with the reasons for the view taken by me.

The relevant facts for determination of these issues may be briefly summarised as follows:—

During the elections held in February, 1954 in PEPSU, S. Mihan Singh Respondent No. 1 for the reserved seat for scheduled castes and S. Gian Singh respondent No. 2 for the General seat, were set up by the PEPSU National Front Party (P. N. F. Party) from the Amlon double member constituency and they were both elected. In this election petition the election of S. Mihan Singh is challenged on the allegation that the allotment of symbol of Camel with a thick black circle round it, to him by the Returning Officer was illegal, improper and unjust on the ground that the symbol of Camel with a circle round it, was not one of the approved symbols and that the symbol with a circle is allotted only to scheduled caste candidates for a reserved seat belonging to recognised and approved parties.

The petitioner seeks to have the election of S. Mihan Singh Respondent No. 1 declared void under Section 100(2)(c) on the ground of allotment of an unapproved symbol in defiance of rules and orders framed under the Act which has materially affected the result of election in as much as too many votes were cast for Mihan Singh Respondent No. 1 by illiterate voters who were asked to vote for the symbol of "Camel" which was also the symbol of Respondent No. 1.

In the petition there is no allegation against S. Gian Singh Respondent No. 2 and his election is sought to be set aside for the reason that if election of S. Mihan Singh is declared void, the election of S. Gian Singh too is liable to be set aside. The petitioner in para. 1(c) of his petition, has stated that this point is legal and he has submitted it for the Tribunal's decision.

The position taken up by the Respondent S. Mihan Singh in his written statement is that the symbol of 'Camel' with a thick circle round it was not an unapproved symbol and its allotment was perfectly legal, proper and quite just, that the respondents No. 1, 2 fought elections on party lines and were set up by the PEPSU National Front which party contested 17 seats including the two in question. The PEPSU National Front Party not having been recognised as All India Party could not have the symbol of 'Camel' reserved for it, but they were allowed to set up candidates who could individually ask for the allotment of a common symbol as mentioned in the order of the Chief Election Commissioner and that the symbol of Camel with a thick circle round it, was in accordance with the rules and instructions of the Election Commission and that the discretion in allotting the symbols, vests in the Returning Officer under Rule 10 of Conduct of Elections and Election Petitions Rules 1951 and his decision is not liable to be called in question before an Election Tribunal. It was further stated by the respondents in their written statements that respondents No. 1 and 2 were sponsored by one and same party PEPSU National Front Party and respondent No. 1 was entitled to the symbol of Camel with a circle round it for distinguishing him from the other party candidate respondent No. 2.

The following issues arise out of the pleadings of the parties:—

- (1) Was the allotment of the symbol of camel with a thick circle round it, to respondent No. 1 illegal, improper and unjust as it is not one of the approved symbols and is allotted only to scheduled caste candidates of approved parties? O.P.
- (2) If so, was the election not free and has the result of the election been materially affected? O.P.
- (3) Is the election of respondent No. 2 also liable to be legally set aside, if the election of respondent No. 1 is declared void? O.P.
- (4) Is the decision of the Returning Officer in assigning the symbol in question to respondent No. 1 final and is not liable to be called in question in this election petition? O.R.
- (5) To what relief is the petitioner entitled?



*Issue No. 1.*—The first point for decision is whether the symbol of Camel with a circle round it was not one of the approved symbols. In the list of 25 symbols Ex. P5 published by Notification No. 56/2/53, dated 6th February, 1953, the symbol of Camel is mentioned at No. 24. The contention of petitioner's counsel is that as the symbol of Camel with a circle round it, does not find place in the list Ex. P5, it cannot be said to be an approved symbol. The respondents' counsel has urged that the symbol which was assigned to respondent No. 1 was Camel but in order to distinguish it from the same symbol assigned to S. Gian Singh, a circle was placed round it and that by encircling it, it does not become a different symbol. The words "The Symbol" used in para. beginning with the words "In two member Constituencies" of Ex. P9 show that a bare symbol and the same symbol when enclosed in a circle, are one and the same symbol. The circle is merely a mark of distinction to show that it was a symbol of Scheduled Caste candidates of same party. In Ex. P9, it is mentioned that the circle is not to be made a badge of distinction between the Scheduled Caste or Scheduled Tribe candidates and the rest of the people, but the concluding words of the para. beginning with the words:—

"The question arises whether Scheduled Caste....necessary" are "No such distinction except for distinguishing him from the other party candidate or candidates is, therefore, necessary".

These words are very significant and clearly indicate that by encircling a symbol it does not become a different symbol but it remains the same symbol, the circle being only a distinguishing mark between the Scheduled Caste candidates and the other party candidate. In this view of the matter, it cannot be said that the symbol of camel with a circle round it was an unapproved symbol outside the list of symbols notified by the Election Commission. I accordingly find that the symbol of Camel with a circle round it was not an unapproved symbol and the Returning Officer would be acting within his authority in assigning it to a Scheduled Caste candidate of any party, as would be presently discussed.

The next point for determination is if a symbol of camel with a circle round it, could be assigned to a Scheduled Caste candidate of an unapproved or unrecognised party. Before the first Elections, certain instructions were issued in 1951 by the Election Commission which are contained in the letter Ex. P9 regarding the allotment of a symbol with a thick circle to Scheduled Caste candidate of a party. In 1951 fourteen parties were recognised, but in 1953, only 4 All India Parties were approved (*Vide* Ex. P3 dated 6th February, 1953). There is nothing in this letter of 1953 Ex. P3 to show that allotment of a symbol with a circle round it could not be allotted to a Scheduled Caste candidate of a party not recognised by the Election Commission. In 1953 certain restrictions were placed on the choice of symbols by the candidates as is clear from the letters Exs. P4 and P6 when notifications were issued, but no such notification or instructions were issued to the effect that a symbol with a circle round it could not be chosen by or allotted to a Scheduled Caste candidate of an unrecognised party. The instructions of 1951 which were modified in 1953 by Ex. P3 to the extent of recognition of 4 parties instead of 14, are not clear enough to show that a symbol with a circle could not be given to a Scheduled Caste candidate of an unrecognised party. The relevant para. of Ex. P9 on which the petitioner's counsel has laid great emphasis reads as follows:—

"The question arises whether Scheduled Caste or Scheduled Tribe candidates not sponsored by any party will have symbols enclosed in thick black circle like the party Scheduled Caste or Scheduled Tribe candidates. The Commission does not agree to this. In the first place, it will increase the task of printing of the symbols, as in that case every symbol in the list in Appendix 'A' will have to be printed in two versions—in one case the bare symbol and in the other the same symbol enclosed in black circle. In the second place, the circle is not to be made a badge of distinction between the Scheduled Caste or the Scheduled Tribe population and the rest of the people. It is to be remembered that a Scheduled Caste candidate is entitled to be considered for the general i.e. the unreserved seat in addition to his being eligible for the reserved seat. No such distinction except for distinguishing him from the other party candidate or candidates is, therefore, necessary". In this letter the case of recognised parties is first dealt with and the same symbols reserved for them could be allotted to Scheduled Caste candidate of recognised parties with the distinction that in the case of Scheduled Caste candidate a circle was to be placed round the symbols.

The para. referred to above then deals with the case of candidates not sponsored by any party. According to the contention of the petitioner's counsel, the words "Any party" means any recognised party whereas the respondents' counsel

maintains that the words any party means any party whether recognised or unrecognised party. The dispute hinges on the interpretation of these words. If we read the letter Ex. P9 as a whole it becomes apparent that where the Commission referred to approved or organised parties, these words were used and even in the opening para. it was said that the recognised parties may be called All India Parties for the sake of brevity and reference. After dealing with the case of recognised parties the next para. begins with the words—The question arises whether Scheduled Caste or Scheduled Tribe candidate *not sponsored by any party* will have symbols enclosed in thick black circles. In my view the candidates not sponsored by any party mean independent candidates who are not set up by any party whether recognised or unrecognised. If by the words "any party" it was intended to mean any recognised party then the words such as recognised or approved or All India Party would have been used as was done at other places in this letter. All that the Commission directed was that independent Scheduled Caste candidates not belonging to any party should not have a circle round their symbols for the reasons given therein. There are definite instructions for Scheduled Caste candidates of recognised parties and an observation is made about independent Scheduled Caste candidates, but no clear direction is given with respect to candidates set up by an unrecognised party. In the concluding para. of this letter; it is mentioned that any such defect in the matter of choice of symbols is technical in nature inasmuch as the assigning of symbols is a matter ultimately within the discretion of the Returning Officer and that this opinion of the Commission should be communicated to the Returning Officers. The opening words of the letter Ex. P9 show that a copy of notification under Rule 5 framed under the R.P. Act regarding the list of 25 symbols was being forwarded to the Chief Electoral Officer, PEPSU with certain other observations and opinion of the Secretary to be brought to the notice of the Returning Officers. A careful perusal of letter Ex. P9 shows that there is nothing in these instructions or any other rules which prohibited the allotment of a symbol with a thick black circle to a Scheduled Caste candidate set up by an unrecognised party. The respondent's counsel has further contended that the instructions in letter Ex. P9 were not issued under Rule 10 of 1951 rules framed under the R.P. Act and embodies merely the opinion or observations which are not binding unless the Commission purported to act to issue instructions under Rule 10 of the 1951 Rules and that this opinion and observations cannot take the place of instructions to restrict the allotment of a particular symbol to candidates of unapproved parties.

The respondents have placed on record a copy of the order of Chief Election Commissioner Shri K. V. K. Sundaram, dated 22nd December, 1953 Ex. R2 with a covering letter No. 56/2/53(13) 8983 and copy of Press release Ex. R1 to show that a party known as PEPSU National Front Party was formed before the elections of 1954 and it set up as many as 18 candidates. The party was not recognised on all India basis but the Chief Election Commissioner observed in his order dated 22nd December, 1953 Ex. R2 that "it (PEPSU National Front Party) is obviously a party which has been formed in view of the forthcoming General Election. It is not entitled to recognition at this stage. There is of course nothing to prevent it from setting up candidates who can individually ask for the allotment of a common symbol, but I do not see any justification at present for reserving that symbol of Camel for these candidates". It is argued by the respondent's counsel that if according to the order of the Chief Election Commissioner the candidates set up by the National Front Party could ask for a common symbol, the Returning Officer could assign the same to them, and that his contention derives support from the order of the Chief Election Commissioner. I think that these observations in the order of Chief Election Commissioner who is the highest officer in authority in Election Commission have great force and should be taken into consideration as the letter Ex. P9 from the Secretary of the Election Commission. The order Ex. R2 goes to support the contention of the respondents and it should prevail in my opinion. The difference between the recognised and unrecognised parties in the matter of allotment of symbols is that in the case of recognised parties certain symbols are reserved for them and in the case of unrecognised parties, one common symbol cannot be reserved for all the candidates. But if a symbol is allotted to one candidate for a General seat, and the same symbol with a circle is assigned to the Scheduled Caste candidate set up by an unapproved party, there is no prohibition or bar in the instructions or rules and by no stretch of language of Ex. P9 it can be inferred that a Scheduled Caste candidate set up by an unapproved party could not be allotted a symbol with a circle round it.

After dealing with the documentary evidence, a brief reference to oral evidence on the point may be also made. The petitioner examined the Electoral Officer, S. Kehar Singh P.W. 4, and Shri Shanti Sarup Returning Officer P.W. 3. It is

admitted by S. Kehar Singh who has been working as the Election Officer since the inception of PEPSU State that the National Front Party was in existence before the elections in 1954 took place and that after perusing the directions issued by the Election Commission, India as contained in Ex. P9, he is in a position to state that there is nothing in these directions against the assignment of a common symbol to the candidates set up by an unrecognised party in a double member constituency. The opinion and interpretation of the witness who has been dealing with election work for some years and had opportunity of studying and carrying out the instructions of Election Commission and has given his opinion after reading the letter Ex. P9, is entitled to consideration, and cannot be brushed aside merely as an opinion, especially when it does not conflict with the directions of Election Commission in Ex. P9.

Shri Shanti Sarup, Returning Officer of Amloh Constituency who allotted the same symbol of Camel to S. Mihan Singh and S. Gian Singh has stated in his statement dated 17th November, 1954 that it was by mistake that he gave the same symbol to both S. Mihan Singh and S. Gian Singh and that he has now realised that it was not necessary for him to allot the same symbol to both the candidates but at that moment his impression was that the same symbol must be allotted to both the candidates with only this difference that so far as the general seat is concerned it should be without a thick circle. The witness has in his subsequent statement dated 1st February, 1955 said that by the words 'Common Symbol', he understood that it was a symbol which had not been reserved for All India Parties or for PEPSU Akali Party and with regard to which there is no prohibition in the matter of allotment. This meaning of common symbol is obviously wrong. The words 'common symbol' in plain language means common to both, i.e., same symbol. He has further added that he now understands that a common symbol with a thick circle round it could not be allotted to a Scheduled Caste candidate of an unrecognised party but admitted that there is nothing in the rules prohibiting its allotment. The witness also produced a letter of the Chief Electoral Officer Ex. R.W. 1/4 dated 1st February, 1954 to show that his action was regarded as improper and irregular and that the Chief Electoral Officer was of opinion that a symbol with a circle on could only be allotted to the candidates of a recognised party. The witness admits that there is nothing in this letter to show as to on what instructions of the Election Commission it is based and that it may be merely an expression of opinion. The writer of this letter Ex. R.W. 1/4 has not been examined by any party. Nor in this letter there is nothing to show as to on what basis this opinion was given. The Returning Officer merely produced Ex. R.W. 1/4 in which opinion of an officer is given and without that officer coming into the witness-box and proving his letter, I do not think that it can be taken into consideration. The letter Ex. R.W. 1/4 in my view is not legally proved and would be strictly speaking inadmissible in evidence.

The letters of the Election Commission Exs. P3, P4, P6 and dated 5th January, 1954 would show that the Election Commission issued certain instructions about the choosing of symbols by the candidates of parties other than recognised ones and for independent candidates a direction was given and certain restrictions were also placed in the choice of certain symbols which were reserved for recognised and State Parties. It is, therefore, evident that the Election Commission being Incharge of Conducting Elections could frame rules for parties other than recognised and direct that symbols with circle on should not be allotted to Scheduled Caste candidates of unrecognised parties. All that is clear from the instructions of Election Commission is that 4 symbols were reserved for All India Parties and two for PEPSU State Parties and the rest of the symbols were free. The only restriction placed on the candidates other than those of recognised parties was that symbols reserved for recognised parties could not be given to the candidates set up by unapproved parties and independent candidates. The symbol of Camel was not one of the reserved symbols and it could be allotted to the respondents. The Election Commission did not agree to the suggestion of enclosing every symbol allotted to Scheduled Caste candidates not set up by any party i.e. for those who stood as independent candidates. For candidates who belonged to a party which though might not have been officially approved, there is no such instruction or direction that symbol with a thick circle, could not be allotted to scheduled caste candidates nor there is any rule to this effect prohibiting such allotment. The allotment of a symbol of Camel with a circle round it to respondent No. 1 is therefore not in contravention of any rule framed under the Act nor it infringes any instructions or directions of the Election Commission. The Returning Officer was, therefore, within his jurisdiction to allot the symbol of Camel with a circle to a Scheduled Caste candidate of an unapproved party and there was no contravention of Rule 10(1) of 1951 rules framed under the Act.

I would hold that the allotment of symbol of Camel with a circle on it to S. Miha Singh respondent No. 1 was not illegal, improper or unjust. The issue No. 1 is accordingly decided against the petitioner.

*Issue No. 2.*—In view of my finding on issue No. 1, this issue would not arise, but I may briefly record my finding on it. Even if there was any irregularity (which in my opinion there was none) in assigning symbols by the Returning Officer, it has not materially affected the result of election. There was no confusion caused to the voters by encircling the symbol of Camel allotted to S. Miha Singh. The petitioner has produced false witnesses and hopelessly failed to prove that the result of the election was materially affected by the assignment of symbol of Camel with a circle to Miha Singh Respondent No. 1.

*Issue No. 3.*—The contention of Respondent's counsel is that as the petitioner's case falls under Section 100(2) (c), R.P. Act, 1951 the election of returned candidate Miha Singh can be only declared void in case petitioner succeeds in proving issues No. 1, 2 and 4 and that the election would not be wholly void unless a case falls under Section 100(1)(c). He has referred to 1954 Supreme Court 520 at page (524) in support of his contention. The petitioner's case is not under Section 100(1) (c) of the R. P. Act, as there is no allegation of improper acceptance or rejection of any nomination in the petition and the petitioner cannot have the election declared wholly void. The election of S. Ghan Singh cannot be legally set aside even if the election of Miha Singh is held to be void. I find issue No. 3 against the petitioner.

*Issue No. 4.*—Rule 10 of the rules framed under the R. P. Act, 1951 which deals with the assignment of symbols lays down that the decision of the Returning Officer in allotting the symbols is final. It has been argued by the Respondents' counsel that the order of the Returning Officer is final and conclusive for all purposes and cannot be called in question before the Election Tribunal. He has also urged that this Tribunal cannot question the correctness of the decision of the Returning Officer and the word 'final' used in Rule 10 shows that the decision of Returning Officer is final *qua* this Tribunal. In order to illustrate his point, he has referred to Rule 47(4) of 1951 Rules under R. P. Act in which the word 'final' subject to any decision to the contrary given by the Tribunal, has been used. By way of analogy he has also referred to Section 36(7) of R. P. Act by which an entry in the electoral roll is made conclusive for the purpose of scrutiny of nominations by the Returning Officer. It was held in 5, E.L.R. 81 at pages 91 and 92, that an entry in electoral roll has to be accepted as conclusive even by the Tribunal and cannot be called in question before the Tribunal. In Rule 10 of 1951 Rules under the Act, the decision of Returning Officer has not been expressly made final subject to any decision of any higher authority, i.e., Election Tribunal. In my opinion where the Returning Officer acts within his authority, i.e., in accordance with the Rules and instructions laid down for the assignment of symbols, his decision is final and its correctness cannot be called in question before the Returning Officer in assigning the symbol of Camel with a circle round it, to the Rules. As observed above, there has been no non-compliance of any rule by the Returning Officer and it cannot be said that he went beyond his jurisdiction and contravened any provision of law, rules or instructions. The decision of Returning Officer in assigning the symbol of Camel with a circle round it, to Respondent No. 1 is, therefore, final and is not liable to be called in question before the Tribunal.

For the reasons given above, I have held that there was no non-compliance of any rule or instructions in the matter of assignment of symbol to Miha Singh Respondent No. 1 and the allotment of symbol of Camel with a circle round it to him was not illegal, improper or unjust, that the result of the Election was not materially affected, that the decision of the Returning Officer in assigning the symbol in question to Respondent No. 1 was final and that the Election is not wholly void. The petition accordingly fails on all the issues and I would dismiss it with costs.

(Sd.) DALIP SINGH, Member,

*Election Tribunal, Patiala*

*The 25th February, 1955.*

## ELECTION PETITION No. 16 of 1954

S. Mohinder Singh vs. S. Mihan Singh and others

## ORDER BY THE TRIBUNAL

The petition is hereby dismissed with costs to Respondents 1 and 2 which are assessed at Rs. 139/8/-.

(Sd.) NAWAL KISHORE, *Chairman.*(Sd.) DALIP SINGH, *Member,**The 25th February, 1955.*(Sd.) KRISHNA SAHAI, *Member.*

[No. 82/16/54/3444.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy.*

